

OCA FILE

LEG

18 November 1988
OCA 3802-88

MEMORANDUM FOR: D/OS
D/OP
ADDO/CI
DGC/AS/OGC
C/EPS/Leg/DO
[redacted] OGC

FROM: [redacted] Legislation Division
Office of Congressional Affairs

SUBJECT: Request for Comments - Proposed DoD Report and
Draft Legislation on Personnel Security

1. Attached for your review and comment is a draft Department of Defense (DoD) report and legislative proposal (last page). The report responds to a congressional reporting requirement contained in legislation which several years ago gave DoD, the Central Intelligence Agency, and Office of Personnel Management the authority to obtain state and local criminal history record information on applicants.

2. If it is concluded that legislation is needed in this area, the most appropriate vehicle may be the draft Fiscal Year 1990 Intelligence Authorization Bill.

3. We would appreciate receiving your comments by 2 December.

Attachment

OCA/LEG [redacted] (18 November 1988)

Distribution:

Original - Addressees

1 - D/OCA

1 - DDL/OCA

1 - OCA Records

1 - [redacted] Liaison

1 - OCA/Leg/Subject File: FY 90 Intel. Auth. Bill

1 - PS Signer

1 - OCA Read



THE UNDER SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301-2000

POLICY

Honorable Les Aspin
Chairman, Committee
on Armed Services
House of Representatives
Washington, DC 20515-6035

Dear Mr. Chairman:

The enclosed status report for calendar year 1987 is provided in response to the requirement set forth in the Conference Report accompanying H.R. 2419, the Intelligence Authorization Act of 1986 (5 U.S.C. 9101). The conferees requested that the Department of Defense (DoD) report annually to the appropriate committees of the Congress with regard to fees for access to criminal history record information (CHRI). The conferees also requested a report on the effect of the fingerprint requirement within two years of enactment of the statute.

As noted in our 1986 report, P.L. 99-169 stimulated a significant increase in fee requests from States and local governments for access to CHRI. The fee situation continued to deteriorate in 1987. In January 1988, the DoD budget reduction forced the cessation of routine payments for CHRI. Fees are now paid to States and local jurisdictions to obtain detailed information on known arrests only. DoD's inability to continue routine payments for CHRI access has adversely affected the quality of personnel security investigations in the key States of California and Washington.

One approach to reducing the cost of CHRI access is by direct terminal access to computerized CHRI files. DoD has demonstrated that it has the capability, if permitted, to access automated systems, thereby saving the fiscal and personnel resources of both DoD and the State agencies. DoD currently has direct "on-line" access to CHRI in Colorado, Georgia, Hawaii, Maryland, Virginia, and St. Louis, Missouri (Regional System for St. Louis Metropolitan area). The State of Alabama has approved direct "on-line" DoD access pending delivery of equipment. The major impediment to expanding DoD access to State automated systems is the policy of certain States prohibiting "on-line" access by noncriminal justice agencies.

Department of Defense experience with P.L. 99-169 over the past 2 1/2 years clearly illustrates a strong need to modify the statute, particularly in the areas of fees, fingerprints and direct terminal access. To this end, I recommend that the following changes in the statute be considered:

1. Deletion of the requirement (Paragraph 9101(b)(1)) for DoD to pay fees to the States and local governments for access to criminal history record information.

2. Inclusion of mandatory access to computerized State and local CHRI files by direct terminal access.

3. Deletion of the requirement (Paragraph 9101(b)(1)) for DoD to submit fingerprints to State repositories for access to CHRI.

4. Amend the statute definition of CHRI to include detention records.

For your convenience, we have enclosed a draft proposal containing the precise language of the recommended statutory changes.

Sincerely,

Craig Alderman, Jr.
Deputy

Enclosures
As Stated

LIST OF COMMITTEES RECEIVING THIS REPORT

Honorable Les Aspin
Chairman, Committee on Armed Services
House of Representatives

Honorable Joseph R. Biden
Chairman, Committee on the Judiciary
US Senate

Honorable David L. Boren
Chairman, Select Committee on Intelligence
US Senate

Honorable Sam Nunn
Chairman, Committee on Armed Services
US Senate

Honorable Peter W. Rodino, Jr.
Chairman, House Committee on the Judiciary
House of Representatives

Honorable John C. Stennis
Chairman, Committee on Appropriations
US Senate

Honorable Louis Stokes
Chairman, Permanent Select Committee on Intelligence
House of Representatives

Honorable Jamie L. Whitten
Chairman, Committee on Appropriations
House of Representatives

STATUS REPORT

IMPLEMENTATION OF P.L. 99-169, TITLE VIII BY THE DEPARTMENT OF DEFENSE,
AS OF 31 DECEMBER 1987

Office of the Under Secretary
of Defense (Policy)
06 September 1988

This is the second report provided in response to the requirement set forth in the Conference Report accompanying H.R. 2419, the Intelligence Authorization Act of 1986 (5 USC 9101). The conferees requested that the Department of Defense (DoD), the Office of Personnel Management (OPM), and the Central Intelligence Agency (CIA) report annually to the appropriate committees of the Congress with regard to fees for access to criminal history record information (CHRI). The conferees also requested that a report on the effect of the fingerprint submission requirement be made within two years of the date of enactment of the statute.

Sections 801, 802 and 803 of P.L. 99-169 provided the Department of Defense (DoD) with the right to access State and local criminal history record information (CHRI) in determining eligibility for access to classified information, and for assignment to or retention in sensitive national security duties. This legislation has been instrumental in securing DoD access to the kinds of criminal history records required for national security purposes. This report provides status information for calendar year 1987 in the following content areas: CHRI access, fingerprint submission requirements, and fees expended for CHRI access.

Two years after enactment of the statute all States with criminal history record repositories have removed any legal bar from DIS fully accessing CHRI. Local agencies, with the exception of nine California jurisdictions, also provided the full criminal record access needed by DoD. This is a very substantial improvement over 1986 when 2 States and 162 local jurisdictions restricted DoD access to criminal history record information (CHRI). During 1987, California was the only state being accessed by DoD which required the submission of fingerprints. We anticipate that the statutory fingerprint requirement will become a heavier burden for DoD in the

future because approximately 20 States are now developing automated identification systems. We expect that many of these States will require submission of fingerprints by DoD for access to CHRI.

The ostensible purpose of the fingerprint requirement is to preclude mis-identification. Requiring DoD to submit fingerprints to access State level CHRI is simply unnecessary. Only a name check is required at the State level because DoD's due process procedures make it virtually impossible that an adverse action could be taken against an individual based upon erroneous reporting of arrest information.

The situation with regard to fee payments continued to deteriorate during calendar year 1987. In 1986, P.L. 99-169 resulted in a significant increase in State and local requests for CHRI access fees, and DoD expended a total of \$482,152 for this purpose. During 1987, DoD fee payments increased by almost 100% and expenditures totaled \$952,000. Almost 94% of this total was paid to State agencies of which California received \$864,000. Table 1 provides summary information on access, fees and fingerprint requirements, by State.

A. CHRI Access as of 31 December 1987

By the end of 1987, all States and the District of Columbia permitted DoD full access to their records for national security purposes. However, DoD has been unable to routinely seek access in 29 States because of fees charged for CHRI or for other operational considerations, such as the limited extent of CHRI on file in these locales or slow response time to CHRI requests.

With regard to DoD access to state-held CHRI, the following changes occurred during 1987: New Hampshire and the District of Columbia shifted from partial to full access; and, DoD terminated routine access in Michigan, New Mexico, and Wisconsin for reasons indicated in Table 1.

All local jurisdictions in the United States were providing DoD with full access to CHRI during 1987, with the exception of the nine California jurisdictions listed below. Among the reasons advanced for noncompliance by these jurisdictions were a lack of personnel to process CHRI requests, requests for indemnification, and misunderstanding by local agencies concerning the requirements for fingerprint submission.

The nine local California agencies not complying with DoD requests are:

Alameda County	Redwood City	Santa Clara County
Freemont	San Jose	San Raphael
La Habra	Sacramento	West Covina

TABLE 1
STATE/CENTRAL REPOSITORY ACCESS - 31 DECEMBER 1987

<u>State</u>	<u>Has Repository</u>	<u>Fingerprints Required</u>	<u>Fee Required</u>	<u>Accessed by DoD</u>
Alabama	yes	no	no	yes
Alaska	yes	no	no	yes
Arizona	yes	no	no	yes
Arkansas	yes	no	no	no
California	yes	yes	\$16.50	yes
Colorado	yes	no	no	yes
Connecticut	yes	no	no	yes
Delaware	yes	no	no	yes
District of Columbia	yes	no	no	yes
Florida	yes	no	\$ 5.00	no*
Georgia	yes	no	no	yes
Hawaii	yes	no	no	yes
Idaho	yes	no	no	no**
Illinois	yes	no	\$ 3.00	no*
Indiana	yes	no	\$ 7.00	no*
Iowa	yes	no	no	no**
Kansas	yes	no	no	no**
Kentucky	yes	no	no	no**
Louisiana	yes	yes	\$10.00	no*

<u>State</u>	<u>Has Repository</u>	<u>Fingerprints Required</u>	<u>Fee Required</u>	<u>Accessed by DoD</u>
Maine	yes	no	no	yes
Maryland	yes	no	no	yes
Massachusetts	yes	no	\$ 3.00	yes
Michigan	yes	no	no	no**
Minnesota	yes	no	\$ 4.00	no*
Mississippi	yes	no	no	no**
Missouri	yes	no	no	no**
Montana	yes	no	no	no**
Nebraska	yes	no	\$ 5.00	no*
Nevada	yes	no	no	no**
New Hampshire	yes	no	no	yes
New Jersey	yes	no	no	yes
New Mexico	yes	no	\$ 5.00	no*
New York	yes	no	\$ 9.00	no*
North Carolina	yes	yes	\$ 8.25	no*
North Dakota	yes	no	no	no**
Ohio	yes	no	no	no**
Oklahoma	yes	no	no	yes
Oregon	yes	no	no	no**
Pennsylvania	yes	no	no	yes
Puerto Rico	yes	no	no	yes
Rhode Island	yes	no	no	yes

<u>State</u>	<u>Has Repository</u>	<u>Fingerprints Required</u>	<u>Fee Required</u>	<u>Accessed by DoD</u>
South Carolina	yes	no	\$ 3.00	no*
South Dakota	yes	no	no	no**
Tennessee	yes	no	no	no**
Texas	yes	no	no	no**
Utah	yes	yes	\$10.00	no*
Vermont	yes	no	no	yes
Virginia	yes	no	no	yes
Washington	yes	yes	\$10.00	no*
West Virginia	yes	no	\$ 5.00	yes
Wisconsin	yes	no	\$ 2.00	no*
Wyoming	yes	no	no	yes

*Denotes those agencies where DoD would effect access if it were not for their fee requirement.

**Denotes those agencies where DoD has chosen not to seek access for operational reasons. Decisions are based on such factors as the limited extent of data on file at a given agency, the quality of CHRI available at the local level in a given state, slow processing of CHRI requests by the repository, etc.

B. Fees for CHRI Access as of 31 December 1987

During calendar year 1987 DoD paid a total of \$952,000 for access to CHRI. Of this total, \$891,000 (93.6%) was paid to state agencies and \$61,000 (6.4%) was paid to local agencies. DoD expenditures for fees during 1987 were approximately twice the \$480,152 expended during 1986.

DoD regularly paid fees to only three States. California received \$864,000 which was 97% of the total expended at the state level. Massachusetts was paid \$25,000 (2.8%) and West Virginia received \$2,000 (0.2%). DoD paid \$61,000 to 25 local agencies for access to CHRI. This was a 94.3% increase over the \$31,391 paid during 1986. DoD routinely paid fees to only 10 local jurisdictions, and to 15 other jurisdictions under the special circumstances indicated in Table 2.

C. States Requiring Fingerprint Submission as of 31 December 1987

Two years after enactment of P.L. 99-160 California was the only State being accessed by DoD which required the submission of fingerprints.

DoD has been informed by the Federal Bureau of Investigation that approximately 20 States are now developing automated fingerprint identification systems. Several of these States currently have fee schedules for fingerprint submission, as indicated in Table 1 but are not being accessed by DoD.

TABLE 2
LOCAL FEES FOR CHRI - 31 DECEMBER 1987

<u>State</u>	<u>Locality</u>	<u>Fee Per Name</u>
California	Alameda County	10.00
	Beverly Hills	8.50
	Burbank	5.00
	Compton	5.00
	Culver City	6.50
	Marysville	10.00
	Imperial County	3.50
	San Jose	4.00
	San Francisco	.32
Missouri	Regional Justice Information Service*	.27
Nebraska	North Platte*	5.00
New Mexico	Albuquerque	5.00
Nevada	Las Vegas	2.00
North Carolina	District & Superior Courts, Wake County	2.00
Minnesota	Minneapolis (for record)	..3.00
Virginia	Hampton	4.00
	Newport News	5.00
Washington	Everett*	10.00
	Island County*	5.00
	King County*	6.00
	Oak Harbor*	5.00
	Seattle*	7.00
	Snohomish County*	5.00
Illinois	Downers Grove*	3.00
	Woodridge*	3.00

The agencies marked with an asterisk (*) represent those where DoD regularly paid a fee during 1987. DoD paid the remaining agencies only in those cases where a record was known to exist with a given agency. In California, for example, a centralized check was made and a fee paid at the State level, and local fees were paid only to obtain records of local arrests reported to DoD by the State.

A Bill

To amend section 9101 of Title 5, United States Code, to provide the Department of Defense, the Office of Personnel Management, the Central Intelligence Agency, and the Federal Bureau of Investigation access to detention records, direct on-line access to criminal history record information, and to exempt said federal agencies from fingerprint and fee requirements.

Be it enacted by the Senate and the House of Representative of the United States of America in Congress, that

section 9101 (a)(2) of Title 5, United States Code, is amended as follows:

by inserting "detentions" after "identifiable descriptions and notations of arrests"; and

section 9101 (b)(1) of Title 5, United States Code, is amended as follows:

(1) by deleting "Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information"; and

(2) by inserting "When requested by the Department of Defense, the Office of Personnel Management, the Central Intelligence Agency, or the Federal Bureau of Investigation, criminal justice agencies shall provide direct on-line access to the extent that criminal history record information is indexed in an automated data base. Costs, if any, assessed for providing direct on-line access pursuant to this subsection shall not exceed the reasonable costs of providing such direct on-line access, nor shall they in any event exceed those charged to State or local criminal justice agencies".